

upstanding toilet seat.

### **LIST OF AMENDMENTS TO THE CLAIMS**

Please make the following changes to the claims of the above patent

application:

Claim 3: (Withdrawn)

Claim 5: (Amended) The toilet over spray shield of Claim 1 having an exterior portion to the upstanding wall and the domed top wherein handle means is provided along the exterior portion of the semi-elliptical walls and the domed top for easy insertion and removal of the device.

Claim 9: (Amended) The toilet over spray shield of ~~Claim 7~~ Claim 8 wherein the amusing image is imparted on at least one sticker with an adhesive back which has been secured to the upstanding wall.

### **RESPONSE TO NON-FINAL REJECTION**

Applicant wishes to respond to the Office Action, mail dated 04/11/2007, as

follows:

#### **Objections to Claims 3 and 5**

Claims 3 and 5 are objected to as not encompassing the elected embodiment.

Claim 3 is drawn to a flange that is substantially L-shaped, and claim 5 is drawn to a handle which is provided along the exterior portion. Because the L-shaped element in Claim 3 is not illustrated in the elected embodiments, Figures 1 and 2, this claim is withdrawn. Claim 5 has been amended to illustrate the handle means along a portion of the semi-elliptical exterior

wall and the domed cover of Figure 2 and Applicant requests Claim 5 be reconsidered for allowance.

### **Objections to the Drawings**

The drawings were objected to because reference numeral "166," as mentioned in page 15, line 13 of the specification, did not appear in the drawings. However, upon further examination of the specification and the drawings, it appears that reference numeral 166 is an inadvertent typo. Upon amendment of the specification to delete of this reference numeral, corrected drawing sheets should no longer be required.

### **Objections to the Specification for failing to provide proper antecedent basis**

The specification is objected to for failing to provide proper antecedent basis for claimed subject matter. Several different phrases found in claims 1, 2, 4, and 9 will be discussed below.

### **Rejections under 112 paragraph 2 Definiteness**

Claims 2 and 9 were rejected under 35 U.S.C. § 112 for being indefinite for failure to point out and distinctly claim subject matter.

Claim 2 was rejected because "Claim 2 recites a 'substantially annular' flange." The flange 20 does not appear to be "annular," and this use of the term is repugnant to the meaning thereof." However, there may have been some misunderstanding as to what the term "annular" referred. It did not refer to the shape of the flange in cross section, which would have created a tubular flange. Instead, the word annular referred to the shape of the flange in its entirety as it encircles the wall of the shield. When one considers that this

encircling of the other parts of the structure of the shield is what annular refers to, then the flange does appear annular, and is entirely in keeping with the standard definition of annular, which is "ringlike."

Claim 9 was rejected because it apparently should depend from claim 8 rather than claim 7. Claim 9 will be amended to depend from Claim 8 to remedy this problem.

### **Rejections under § 102(b) Anticipation**

The examiner rejected claims 1, 2, 4, and 7 as being anticipated by Masters, et al., Pat. No. 5,077,840, under § 102(b). Each of these claims will be discussed individually below. To anticipate a claim, the reference must teach every element of a claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). The knowledge that § 102(b) relies on a strict standard of identity is critical to understanding why Masters, et al. does not anticipate these claims.

Claim 1 recites a male over spray shield having an upstanding wall which is adapted to removably sit *within* a conventional toilet bowl. (Emphasis added). The Masters reference discloses a device that is intended to be placed on top of the toilet rim. Although

both devices have flanges, the flanges in Masters perform the structural task of holding the channeling apparatus onto the toilet bowl, whereas the flanges in the present application merely steady the spray shield; it is the structure of the shield itself which holds it in the toilet. Furthermore, Masters discloses a C shaped flange that extends downward to go around the edge of the toilet bowl, whereas the flange in the present application extends outward, and merely sits on the edge of the toilet bowl. Because the flange in Masters is structurally and functionally different from the flange in the present invention, the rejection based upon §102(b) should be withdrawn.

Just as claim 1 had a flange element, Claim 2 claims a flange attachment with a substantially annular flange. Because annular means "ringlike," See [www.onelook.com](http://www.onelook.com), this is essentially reciting a flange that is a substantially circular formation around a portion of the wall of the device. This is different from what is disclosed in Masters because Masters discloses a C shaped flange that extends downward to go around the edge of the toilet bowl, whereas the flange in the present application extends outward, and merely sits on the edge of the toilet bowl. Because this a different type of flange, both in structure and function, Masters et al. does not teach every element of claim 2.

Claim 4 was also rejected under § 102(b) as being anticipated by Masters et al. It recites the toilet spray shield of claim 1 having an exterior portion to the upstanding wall of the device and further the attachment means are integral thereto. This, when interpreted in conjunction with the specification, refers to a handle which is integrated into the structure, such as the handle shown in Figure 5. It takes only a cursory reading of Masters, et al. to

ascertain that no handle of any type is disclosed in that document. Since claim 4 recites a structure not found in Masters, et al., it is not anticipated by that reference, and therefore should be allowed.

Claim 7 recites an interior wall which extends at least one inch below the flange attachment means. Masters discloses nothing that shows the interior wall extending beyond the flange attachment means. Even though the flange may extend below the attachment means, the interior wall is never shown to extend at all below the flange attachment means. Thus, the element of the inner wall extending more than one inch below the flange attachment means does not appear in Masters, et al., and therefore, the rejection of Claim 7 is improper and should be withdrawn.

#### **Rejections under § 103(a) Obviousness**

The examiner states that claims 1, 2, 4, and 7-9 are rejected under 35 USC § 103(a) as being unpatentable over Masters and Gambla, et al. All of these rejections should be withdrawn, because Gambla, et al. is an impermissible reference to use in this case, and thus, any rejection relying on this reference should be withdrawn.

For example, the examiner has rejected claim 8 using claiming that the combination of references Masters in consideration of Gambla, et al. ("Gambla"), when combined, make the spray shield with an image as described in claim 8 obvious. However, combining these references is impermissible under 35 U.S.C. § 103(c), because the Gambla reference cited is the same inventor as the current applicant. 35 U.S.C. § 103(c)(1) states:

Subject matter developed by another person, which qualifies as prior art only under

Inventor: Ms. Eve Gambla  
Title: IMPROVED TOILET OVERSPRAY SHIELD FOR MALES  
Ser. No.: 10/792,235  
Filing Date: 03/03/2004  
Examiner: Mr. Robert M. Fetsuga  
Group Art Unit No.: 3751

one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Ms. Eve Gambla is the inventor named in both the Gambla reference cited by the examiner and the present claimed invention. As such, her previous invention should not be used as prior art against her, and accordingly, the rejection of claim 8 should be withdrawn as being improper.

As for the other claims rejected under § 103(a), the examiner has not made it entirely clear whether he is rejecting them using Masters, Gambla et al., or some combination thereof, but since it is probable that all of these rejections rely at least in part on the Gambla et al. reference, given the phrasing of 7. on page 5 of the Office Action, every rejection based on § 103(a) should be withdrawn.

Hence, Applicant submits that the claims of the instant application are now in condition for allowance and earnestly solicits an expedient Notice of Allowability.

Respectfully Submitted,

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